

**OSWER GUIDANCE FOR THE REGIONAL PUBLIC LIAISONS  
MARCH 2004**

**I. PURPOSE**

The Environmental Protection Agency's Office of Solid Waste and Emergency Response (OSWER) established the Regional Public Liaisons (formerly known as the Superfund Regional Ombudsmen) to provide information and assistance to the public in resolving issues and concerns raised about the programs administered by OSWER. The purpose of this guidance is to explain the role and conduct of the Regional Public Liaisons (RPLs), scope of their activity, and the guidelines under which they coordinate and carry out their responsibilities. The main objective in issuing this guidance is to improve the effectiveness of this program by giving the RPLs and those who may contact them a clear and consistent set of operating policies and procedures. At a minimum, the Agency expects the RPL to be responsive and helpful when contacted by a member of the public. The Agency encourages RPLs to go beyond this basic requirement and take as proactive and preventative an approach as their time and resources permit.

**II. THE ROLE OF THE REGIONAL PUBLIC LIAISON**

The programs administered by OSWER are technically complex, multidisciplinary, and often controversial. The program staff in the Regions and at Headquarters are committed to implementing the federal statutes managed by EPA, to being responsive to the public, and to resolving issues and concerns that are brought to their attention. In some cases, the individual or group raising the concern does not believe the official problem solving channels dealt fairly or fully with their situation. In such cases, the individual or group may ask for help from the RPL.

The RPL is an Agency official who receives inquiries and concerns about the administration of an OSWER program. Each Region will designate one individual to serve in this capacity. The RPL does not have authority to change decisions that have been made by program staff. His/her role is to listen to all sides in an impartial, objective manner, to provide assistance in trying to understand and resolve the problem, and, where appropriate, to recommend possible solutions to senior Agency managers.

If community members believe that the official Agency procedures have failed to adequately address their concerns, they may ask the RPL to help them get information or assistance from within the system. However, the RPL is not an advocate for a community or any person or institution. Rather, the RPL encourages and promotes changes he/she believes will serve both the individual and the public interest. The RPL seeks to improve management practices, policies, or administration of such policies that he/she believes are inefficient or unfair and that may have given or may give rise to a complaint. The RPL must clearly explain to all who request his/her assistance that he/she will be a reviewer of the situation and not a personal

advocate. However, the RPL may champion his/her recommendations to EPA senior management once he/she has completed his/her review.

The RPL may be called to serve in a number of capacities: 1) providing information and facilitating informal contact with EPA staff, 2) helping to resolve problems, and 3) making recommendations to Agency senior management that are aimed at improving the program. The goal of the Regional Public Liaison is to respond to requests in an appropriate, transparent and objective manner as promptly, informally and discreetly as possible.

### **Providing Information**

Many members of the public and regulated community either do not know how to obtain information about the solid and hazardous waste programs under the purview of OSWER or feel frustrated in their attempts to cope with the complexities of these programs. The RPL may be asked to help a citizen understand how EPA operates, what the appropriate laws, rules, or policies are, or how a citizen may directly handle a complaint. The RPL may answer general questions about the programs administered by OSWER, or may direct the person to the appropriate EPA staff to answer the questions. The RPL may also facilitate the communication between a requestor and EPA staff. In doing so, the RPL assists members of the public to gain access to information about the solid and hazardous waste program that will help them participate more fully in established Agency processes.

The RPL will refer most informational requests to some appropriate source, such as regional or Headquarters program staff, available hotlines, the RCRA Docket, the Underground Storage Tank Docket, the CERCLA Docket, the Freedom of Information Act Office, or the EPA Home Page on the Internet. The RPL usually will handle problems or concerns, which have not already been considered by the EPA staff, by referring the requestor to the appropriate program office. The RPL generally will get personally involved only when an issue or concern has not been addressed satisfactorily through normal channels.

### **Resolving Problems**

The RPL is available to help resolve issues and concerns raised by members of the public or the regulated community. Sometimes, by facilitating communication between the person raising the issue and appropriate program staff, the RPL can help to clear up or deal with the problem. Sometimes the issues may be more substantial and the RPL will try to informally mediate between the parties. It is almost always in the best interests of both those who ask the RPL for assistance and of the Agency, if a mutually agreeable solution can be found. If the circumstances seem favorable, the RPL will work with the parties and help them move toward agreement. The role of the RPL is not to advocate for a particular outcome, but to try to increase understanding and to assist in the search for appropriate ways to reach closure. Unlike formal mediation, the RPL always retains the discretion to limit the issues which will be considered (in formal mediation the issues to be discussed are left to the parties to decide). Even with the assistance of the RPL, sometimes the parties may not be able to bring the issue to closure. In

these circumstance, the RPL will work with the Division Director to see if the issues/concerns can be resolved. If an appropriate accommodation cannot be reached, the RPL has the discretion to raise any remaining issues/concerns with the Regional Administrator.

### **Encouraging Institutional Reform**

The RPL is in a unique position to identify and recommend potential improvements to the management and implementation of the OSWER-related programs. On a regular basis, he/she hears issues, concerns and criticisms of the programs from a wide variety of sources. From this, he/she may identify policies and guidance which are causing problems as well as opportunities for making program operations more efficient or effective. Alerting senior EPA managers to what may be an unwise policy or practice or unfair administration of a policy is as important as the resolution of the specific problem. By making well considered recommendations to EPA program managers, the RPL can point the way to positive institutional change that could prevent or reduce similar problems from arising in the future.

## **III. OPERATING PRINCIPLES**

In order to have the capacity and credibility to perform his/her responsibilities effectively, the RPL must be able to act with independence, impartiality and discretion.

### **Independence**

The RPL will be free from actual or apparent interference in the legitimate performance of his/her duties. The RPL has the autonomy to look into or reject any issue or matter consistent with this guidance. As previously mentioned, the Agency expects the RPL to be responsive and helpful when contacted by a member of the public.

### **Impartiality**

The RPL will conduct his/her work objectively and fairly. He/she has a responsibility to understand the perspectives of all parties known to be involved in an issue. The RPL must treat everyone with respect and neither have nor show personal bias towards or against any individuals or organizations. Impartiality does not preclude the RPL from recommending remedies for individual problems or advocating process or organizational improvements. However, the RPL must provide sound reasoning to justify the changes he/she proposes.

### **Discretion**

The RPL must always act with discretion and tact. He/she should conduct this work without publicity or speculation. Any information must be managed to avoid unnecessary or inappropriate disclosure.

## **IV. REGIONAL PUBLIC LIAISON SKILLS AND ABILITIES**

The RPL should be a person of judgment, objectivity and integrity who is capable of dealing effectively and appropriately with all kinds of people, issues and situations. The RPL must operate by fair procedures to aid in the just resolution of a complaint or a problem. An RPL should be:

- C Knowledgeable
- C Independent
- C Respectful of the confidentiality of the process
- C Impartial and fair
- C Sensitive, empathetic and patient
- C Non-confrontational

The RPL must use a variety of skills to effectively deal with the numerous requests for information, questions and complaints brought to his/her attention. The RPL must obtain facts, sort information, and provide recommendations to help identify potential solutions. The RPL should possess good communication skills, especially the ability to be a good listener. He/she must possess the technical and analytical skills necessary to understand and work with a wide array of issues. The RPL must also have the ability to develop, evaluate, and successfully propose recommendations to resolve problems and streamline or improve operations.

## **V. SCOPE OF ACTIVITY**

At the discretion of the Regional Office, the RPL is authorized to provide information and look into issues and concerns related to OSWER's administration of the programs implemented and delegated under the following authorities:

- C Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or Superfund including federal facilities
- C Resource Conservation and Recovery Act (RCRA), including UST
- C Emergency Planning and Community Right-To-Know Act (EPCRA) or Superfund Amendments and Reauthorization Act, Title III
- C Oil Pollution Act
- C Clean Air Act, Section 112r
- C Defense Environmental Restoration Act
- C Base Closure and Realignment Acts
- C Toxic Substances Control Act
- C National Environmental Policy Act

Except as noted elsewhere in this guidance, a matter may be referred by a member of the public or discovered on the RPL's own initiative during the performance of duties. The RPL lacks legal authority to reverse or modify any program decisions or actions, either those already taken or those that may be taken in the future. The RPL's ability to facilitate problem resolution and help bring about change comes through his/her collaborative, good faith interactions with the public, program managers and staff.

The RPL will screen an issue or complaint to determine if it falls within this prescribed

scope of activity. Even when it does, the RPL has the discretion either to accept it or decline to act. Among the reasons that the RPL may decide not to take on a matter are the following:

- C the concerns, even if true, do not establish Agency error or raise sufficient public policy questions
- C there is insufficient information available from the requestor or other sources
- C the requestor fails to cooperate
- C the workload necessary to address this matter will exceed available resources
- C the issue has no merit
- C the issue has undergone recent review by an independent, external organization such as the Government Accounting Office

The RPL program is not a substitute for existing channels of management authority or established formal administrative or judicial proceedings. In those instances where the requestor has not utilized the Agency's established complaint or resolution process, the RPL will facilitate communications between the requestor and the appropriate individuals and existing channels of management authority. For example, cleanups under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, or "Superfund") are selected and carried out under an administrative process governed by the National Contingency Plan (NCP). If a requestor has concerns about how a CERCLA cleanup was or could be selected or carried out, the RPL should facilitate communication between the requestor and EPA staff who are responsible for the cleanup.

### **Matters in Litigation**

In general, the RPL will not get involved in an issue or dispute which is in litigation, i.e. pending before a court.

### **Matters Under Investigation**

The RPL will not intervene in a matter under investigation by the EPA Office of the Inspector General (OIG) (generally matters related to fraud, waste or abuse) or related to ongoing criminal investigations or cases. When the RPL becomes aware that a matter or issue is being considered by the OIG, another Federal law enforcement agency, or the EPA Criminal Investigations Division, the RPL will discontinue any investigation and refer any information to the relevant office. The RPL must promptly report to the OIG Office of Investigations any allegation within the jurisdiction of the OIG, including any information and evidence, rather than pursuing an independent inquiry of that matter.

## **VI. COORDINATION WITH THE NATIONAL OMBUDSMAN**

In order to meet their respective responsibilities and to serve the public well, the National Ombudsman and the RPL must coordinate, cooperate and provide assistance to each other. Good communication is the essential foundation. Open and frequent communication between

the RPL and the National Ombudsman will help avoid potential confusion and duplication of effort. The National Ombudsman and the RPL share the responsibility of ensuring the appropriate level of coordination between them occurs.

The RPL must promptly report to the National Ombudsman any inquiry that constitutes a serious complaint or allegation about an Agency program or operation. The National Ombudsman and the RPL will coordinate to determine who should handle the issue, if at all. If the National Ombudsman decides to handle the issue, the RPL will not take any independent action which could complicate or undercut the National Ombudsman's inquiry.

The RPL will not get involved in a matter under investigation by the Office of the Inspector General (OIG), unless a specific request for assistance is made by the National Ombudsman. The one exception to this restriction is that the RPL may provide routine, publically available information about a site or a response.

In order to help ensure good coordination of potentially intersecting activities, the National Ombudsman is welcome and encouraged to participate in the monthly conference calls and the annual meeting held by the RPL network.

## **VII. COORDINATION WITH COMMUNITY INVOLVEMENT STAFF, ALTERNATIVE DISPUTE RESOLUTION SPECIALISTS AND OTHER STAFF**

The RPL, regional community involvement (CI) staff, and the Alternative Dispute Resolution (ADR) Specialist all have an interest in keeping controversy and conflict from arising and in working to resolve problems that do occur in a fair and timely manner. Therefore, it is important that they coordinate and work well together. This is a mutual responsibility. The RPL should be sure to provide notification to appropriate staff when handling an issue. Likewise, CI and ADR staff should let the RPL know when they hear about issues that may be relevant. There may be circumstances where coordination will take little effort. For example, the RPL may have other responsibilities and may already be doing community involvement or some other related work.

The CI staff have the day-to-day responsibility for planning and implementing outreach and public involvement activities for the region. Since their primary role is to be in communities dealing with the people who live and work there, they are the ones most likely to hear first about or recognize problems. Generally, they will be able to handle the situation. However, they may want to call on the RPL when existing channels for problem resolution have not worked or when there is a particularly contentious relationship where a more neutral party might be of assistance.

The ADR Specialists are responsible for promoting the effective use of ADR within their Regions. They serve as the primary liaison between the Region and all external public and private entities on ADR-related matters and provide leadership in the Region regarding the development and improvement of regional ADR policy and practice. They may also provide case specific consultation and intervention. All of these activities are related to the

responsibilities of the RPL, so it is important that the RPL and the ADR Specialist coordinate and, as appropriate, support each other.

The RPL should familiarize the CI staff, the ADR specialist and others, as appropriate, with his/her skills and overall approach to carrying out the position's responsibilities. He/she should clearly lay out any procedures which these other staff should follow to initiate RPL involvement. The RPL should be sure to give advance notice to and coordinate appropriately with these staff when considering a matter.

## **VIII. CONDUCTING RPL WORK**

In order for the RPL to be effective as an information provider, informal problem resolver and a promoter of beneficial institutional change, he/she must work in a way that fosters respect from others in the program and elsewhere. The RPL's success will also depend upon obtaining the cooperation and support of others, following applicable Agency procedures, and operating in a clear, transparent, yet discreet manner. In conducting his/her work, the RPL should operate within the following guidelines.

### **Communication with the Media**

Occasionally, the media may seek out an RPL for comment. The RPL should make himself/herself available to them, but should coordinate, as appropriate, with the press office and program staff beforehand. The RPL should avoid statements that appear to prejudge the outcome of an issue or advocate a particular point of view. Maintaining discretion is a vitally important aspect of the RPL function. The RPL must avoid disclosing inappropriately any information that is provided. Consequently, there may be instances when the RPL cannot comment or provide information to the public or the media.

### **Access to Information**

In the course of his/her work, the RPL should collect and utilize information from all of the parties involved in an issue. The RPL should have access to all public records that he/she finds relevant. When providing material, Agency staff should be sure to identify any Privacy Act information, confidential or business financial/trade secret data or information (Confidential Business Information [CBI]), and any privileged documents. [Note: Special training is required before EPA employees are authorized to review materials claimed as CBI.] The RPL is responsible for ensuring that all confidential business information procedures are followed. Confidential or privileged documents may not be released without the concurrence of the Office of General Counsel (OGC) or the Office of Regional Counsel (ORC), as applicable, and the program office holding that privilege.

### **Procedures for Releasing Documents Related to RPL Work**

The Agency's standard procedures for responding to requests from outside parties for documents in EPA's possession apply to all documents collected and used during an RPL's work.

Generally, all requests for documents should be treated as requests under the Freedom of Information Act (FOIA). The only exceptions to this policy are for written requests made to EPA either by another Federal agency or by a Member of Congress. The RPL should coordinate requests from another Federal agency with ORC and requests from Congress with the Office of Congressional and Intergovernmental Relations. The release of documents to another Federal Agency or to Congress does not authorize the release of those documents to other parties outside EPA.

Responses to all other requests for documents are governed by FOIA, the Agency's FOIA regulations (40 C.F.R. Part 2) and the EPA FOIA Manual. FOIA generally requires agencies to make documents available to the public on request. However, it also authorizes agencies to withhold certain categories of documents from the public, including "intra-agency memorandums or letters which would not be available by law to a party other than an agency in litigation with the agency". 5 U.S.C. § 552(b)(5). See also 40 C.F.R. § 2.118. This includes documents which contain deliberative, attorney-client, attorney work-product, or other privileged information.

The EPA FOIA Manual states that if a document "may be subject to withholding," it should not be released in response to an oral request, but only to "a written request to the appropriate Agency or Regional FOIA Office." (EPA regulations also require FOIA requests to be in writing, 40 C.F.R. § 2.108.) Documents generated or acquired during an RPL's review of work on an Agency decision (e.g., a remedy selection decision under CERCLA) "may be subject to withholding" in response to a request because they may contain deliberative, attorney-client, attorney work-product, or other privileged information.

Any FOIA requestor who disagrees with the initial determination to withhold information may appeal that determination. 40 C.F.R. § 2.114. All final Agency determinations on FOIA appeals are made by the Associate General Counsel, Finance and Operations Law Office, by delegated authority. 40 C.F.R. § 2.115.

## **IX. ACCESS TO MANAGEMENT**

The RPL serves as a facilitator in providing assistance to the public and as an internal change agent. The RPL has no authority to make decisions regarding site or facility activities or program policies and cannot independently change Agency decisions. The RPL should always first try to resolve concerns informally with the appropriate program managers. When a resolution at this level is not possible, the RPL always has the discretion to take the matter directly to the Regional Administrator's Office.

## **X. RPL ANNUAL REPORT**



To help ensure accountability and to document workload, at the close of a fiscal year, each RPL will provide an annual report to his/her Regional Administrator, with a copy to the Assistant Administrator for Solid Waste and Emergency Response. This report should summarize the numbers and types of issues and concerns that the RPL addressed. It may also be a vehicle for making process and organizational recommendations intended to improve the effectiveness or efficiency of the program and to speak publicly on issues of concern.

## **XI. CONFLICT OF INTEREST**

RPLs are subject to the same requirements regarding conflicts of interest as other Agency employees. Among other things, this means that if the RPL has a conflict of interest, he/she will notify his/her supervisor and recuse himself/herself from the inquiry. The RPL's supervisor should refer the inquiry to an alternate RPL, another RPL or the National Ombudsman.

If the RPL believes that no conflict of interest exists, but a party or parties to the matter believes the conflict is real, the matter will be referred by the RPL's supervisor to the ORC for a final determination.

## **XII. ACCOUNTABILITY**

The RPL, and all staff working with him/her, are expected to act in a professional, objective and impartial manner. The RPL is accountable for the successful performance of his/her official duties, as defined in his/her position description and more specifically delineated in his/her annual performance agreement. As a Federal and EPA employee, the RPL is required to adhere to the Agency's policies and regulations governing employee conduct.